

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARMELO RODRIGUEZ ZAYA,

Petitioner,

No. CIV S-01-0398 FCD GGH P

vs.

IMMIGRATION AND NATURALIZATION  
SERVICE, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

Petitioner is proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges his indefinite detention in the custody of the Immigration and Naturalization Service (INS). On March 27, 2002, the court dismissed the petition. On April 8, 2005, the Ninth Circuit Court of Appeals reversed and remanded this matter. In its order, the Ninth Circuit cited Clark v. Martinez, 125 S.Ct. 716 (2005) (holding that Zadvydas v. Davis, 533 U.S. 678 (2001) bars the indefinite detention of inadmissible aliens under 8 U.S.C. § 1231(a)(6)).

On April 13, 2005, the court ordered petitioner to inform the court of the status of his detention. On May 16, 2005, petitioner filed a response to the April 13, 2005, order.

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1 Petitioner states that he was released from Bureau of Prisons custody on his own recognizance on  
2 September 3, 2004.

3 On June 15, 2005, the court ordered petitioner to show cause within ten days why  
4 this action should not be dismissed because he has already received the relief sought in this  
5 action. Petitioner did not respond to the June 15, 2005, order. Accordingly, because petitioner  
6 has been released from detention, and received the relief sought, the court recommends that this  
7 action be dismissed.

8 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

9 These findings and recommendations are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
11 days after being served with these findings and recommendations, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
14 shall be served and filed within ten days after service of the objections. The parties are advised  
15 that failure to file objections within the specified time may waive the right to appeal the District  
16 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: 8/8/05

18 /s/ Gregory G. Hollows

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20 GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

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